IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 20.04.2005

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.K.KRISHNAN

Writ Appeal No.452 of 2001
and
C.M.P. No.3415 of 2001

Moulana Abdul Kalam Azad
Memorial Institute of
Paramedical Sciences,
rep. by its Secretary,
1, Appavoo Street,
Triplicane, Chennai 600 005. ... Appellant
(3rd Respondent)

vs.

1. R. Indumathi

2. State of Tamil Nadu,
rep. by its Secretary (Health)
Family Welfare Department
Fort St. George, Chennai 600 009.

3. The Director of
Medical Education,
Chepauk, Chennai 600 005. ... Respondents
(Petitioner and
Respondents 1 and 2)

For Appellant : Mr.M.Ravindran, Senior Counsel for Mr.V.Viswanathan.
For R-1 : Mr.Parthasarathy
For R-2 & R-3 : Mr.D.Krishnakumar, Special Govt. Pleader.

Appeal under Clause 15 of Letters Patent against the Order dated 17.01.2001, made in W.P. No.6297 of 1999 on the file of this Court.

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J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above Writ Appeal has been filed against the order of the learned single Judge dated 17.01.2001 made in W.P. No.6297 of 1999, in and by which, the learned Judge after finding that the action and stand of the Management are clearly arbitrary and illegal, resulting in loss and damage to the writ petitioner, directed the Management to return the tuition fees of Rs.15,000/- paid by her and also awarded exemplary costs of Rs.25,000/-.

2. Heard learned Senior Counsel for appellant as well as learned counsel for respondents.

3. After taking us through the order of the learned single Judge, learned Senior Counsel appearing for the appellant raised the only contention that the learned single Judge is not justified in awarding exemplary costs of Rs.25,000/-. Except the said contention, no other point has been urged before us. Accordingly, the only point for consideration in this Appeal is as to whether the learned single Judge is justified in awarding exemplary costs of Rs.25,000/- in favour of the writ petitioner.

4. Brief facts which are required for the disposal of the above Appeal alone are stated hereunder:

The first respondent herein/writ petitioner, on completion of her +2 Examination in 1998, wanted to join the Diploma course in Pharmacy. On seeing an advertisement in Daily Thanthi, dated 09.08.1998, issued by Moulana Abdul Kalam Azad Memorial Institute of Para Medical Sciences, Triplicane, Chennai-2, the third respondent in the Writ Petition and the appellant before us, inviting applications for admission to Diploma courses in Medical Lab, Pharmacy and Computer Applications for the academic year 1998-1999, and after ascertaining the fact from the advertisement that the said Institute is approved by Government of Tamil Nadu, AICTE & PCI, the writ petitioner purchased an application form to join in that Institute. Thereafter, the Writ Petitioner was asked to pay a sum of Rs.15,000/- towards course fees, lab charges and lab maintenance charges and she was also directed to submit the testimonials and +2 Certificate. It is the case of the writ petitioner that on 28.8.1998, the guardian of the writ petitioner paid a sum of Rs.15,000/- towards fees and for that the Institute issued a receipt in the name of Abdul Rahman and Sons, a Public Charitable Trust, situated at Anna Nagar, Chennai-40. Thereafter, the applicant/minor girl went to the Institute on 01.09.1998 to attend classes as informed by the

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Institute at the time of admission. At that time, she came to know that no other student has joined the course except herself. When enquired, she was pacified by the Management that in due course students will be admitted. On verification, she came to know that there is no teaching staff to conduct Pharmacy and other courses and that the Government has not granted recognition to run the Institute for the academic year 1998-1999. However, the Institute was permitted to start the courses only from the academic year 1999-2000, that too was provisionally granted subject to fulfilling certain terms and conditions as stipulated in G.O.Ms.No.560 dated 14.10.1998. After knowing all these details, the writ petitioner approached the 3rd respondent/Institute to return back the certificate and testimonials and also requested to refund the fees. Since there was no response from the Management, she issued a legal notice on 26.2.1999 through an Advocate for return of the certificate and testimonials as well as a sum of Rs.15,000/- paid towards fees for admission and also a sum of Rs.4.5 lakhs towards mental agony and loss of one academic year. Since the said request was not considered by the Institute, the applicant approached this Court by way of Writ Petition, namely, W.P. No.6297 of 1999.

5. Before the learned single Judge, the Secretary of the Institute filed a counter affidavit, disputing various averments made by the writ petitioner.

6. The learned single Judge, after satisfying himself that on the date when the Management made the advertisement in Daily Thanthi, that is, on 09.08.1998, the Institute was not having approval by the competent authority/Government, and hence, it misled the applicant by entertaining her application and receiving fees etc.; and that the Management failed to comply with the demand made by the applicant through legal notice, issued a mandamus for refund of tuition fees of Rs.15,000/- and, in view of the conduct of the Management, also awarded exemplary costs of Rs.25,000/-.

7. We have also verified the advertisement made in Daily Thanthi dated 09.08.1998, which finds place at page No.6 of the typed set of papers. A perusal of the said advertisement gives an impression as if the appellant/Institute is an approved Institute, recognized by the Government of Tamil Nadu, AICTE & PCI. It is clear that based on the said advertisement, the first respondent herein/applicant made necessary application to the Institute for studying the Diploma Course in Pharmacy for the year 1998 and also paid Rs.15,000/- towards fees. The particulars furnished in the affidavit and also the details stated in the impugned order of the learned single Judge amply

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show that recognition was not granted to the appellant/Institute for the year 1998 as mentioned in the advertisement found in Daily Thanthi on 09.08.1998. The Government Order, namely, G.O. (Ms)No.560, Health and Family Welfare Department, dated 14.10.1998, specifically makes it clear that the Government permitted the said Institute provisionally to start Diploma in Pharmacy course with an annual intake of sixty students from the academic year 1999-2000 subject to the condition that the Trust should fulfil all the stipulations laid down in the Government Order first read therein, that is, G.O.Ms.No.1596 Health dated 13.8.1986. In such circumstances, it is not in dispute that for the academic year 1998, the appellant/Institute was not having the approval or recognition from the authority concerned/Government. While so, it is not clear as to how the Institute made the advertisement in Daily Thanthi, inviting applications for admission to certain courses including Diploma in Pharmacy. Added to it, knowing that on the relevant date, the said Institute was not having recognition or approval, the Management entertained the application of the first respondent herein and also received fees of Rs.15,000/-. It is sickening to note that when the applicant demanded return of the fees amount and the testimonials as well as certificate on coming to know the fact that the Institute was not having recognition and also the infrastructural facilities etc., it is but proper for the Management to have returned the same without any hesitation. The fact remains, she was forced to send legal notice, demanding return of the certificates and the fees paid, and that too was not complied with, which necessitated her to approach this Court by filing Writ Petition. Inasmuch as the date on which the advertisement was made, that is, on 09.08.1998, inviting applications for admission to various courses including Diploma in Pharmacy, the Institute was not having recognition or approval by the authority concerned, we are of the view that the Management is not justified in entertaining the application of the applicant as well as receiving the fees of Rs.15,000/- for the year 1998 as if that it would be possible for them to conduct the course in the year 1998 itself. Added to it, when the applicant made a request to return the testimonials and certificate as well as for refund of the fees, the Institute, realising the mistake on their part, ought to have returned the same without any hesitation. As said earlier, since there was no response for the legal notice, the applicant was forced to approach this Court by filing Writ Petition. In such circumstances, we are of the view that the learned single Judge is perfectly right in awarding exemplary costs of Rs.25,000/- in favour of the writ petitioner. It is to be noted that the applicant/first respondent lost not only one academic year but she was forced to undergo mental agony in getting back her certificate, testimonials as well as the fees paid by her.

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8. We are in entire agreement with the conclusion arrived at by the learned single Judge and we do not find any merit in this Appeal. Accordingly, Writ Appeal fails and the same is dismissed. Connected Miscellaneous Petition is also dismissed. No costs.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1. The Secretary (Health), Family Welfare Department,
Fort St. George, Chennai 600 009.

2. The Director of Medical Education,
Chepauk, Chennai 600 005.

1 cc to Mr.S.Parthasarathy, Advocate, SR. 19012
1 cc to the Govt. Pleader, High Court, Madras. SR. 19072

W.A.No.452 of 2001
& connected
Miscellaneous
Petition.

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